

**V & B, Inc., t/a Apollo Construction Co. and
Plumbers and Pipefitters Local Union No. 9,
United Association of Plumbers and Pipefitters.
Case 22-CA-20405**

January 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On June 21, 1996, Administrative Law Judge James F. Morton issued the attached decision. The Respondent and the General Counsel each filed exceptions and supporting briefs, answering briefs, and reply briefs.¹ The General Counsel also filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

¹ The General Counsel filed a motion to strike portions of the Respondent's exceptions and supporting brief, and the Respondent filed a response. Specifically, the General Counsel asserts that the Respondent did not comply with Sec. 102.46(b) and (c) of the Board's Rules and Regulations inasmuch as its exceptions and brief refer to the current employment status of Scott Williams without citation to the record. The General Counsel notes that the record contains no evidence regarding Williams' current status.

Sec. 102.46(b)(2) of the Board's Rules states that any exception which does not comply with the requirements of Sec. 102.46(b)(1) "may be disregarded." The Respondent's exceptions are not in conformity with Sec. 102.46(b) with respect to Williams' status; however, we do not rely on the Respondent's assertions in this regard in reaching our decision. Therefore, we deny the General Counsel's motion.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's failure to address two additional complaint allegations and to find that the Respondent further violated Sec. 8(a)(1).

First, the General Counsel contends that the Respondent unlawfully utilized security guards to engage in surveillance of its employees' union activities. We find it unnecessary to pass on this issue because such a violation, even if found, would be cumulative and have no effect on the remedy. In this connection, we observe that the judge found, and we agree, that the Respondent engaged in unlawful surveillance when its supervisors and managers took turns standing watch over the shop employees on January 3, 1995.

Second, the General Counsel contends that the Respondent instituted an unlawful prohibition against solicitation. We note that the judge found that the Respondent unlawfully restricted its employees' access to the shop before working hours in order to impede the employees' efforts to communicate with each other about the Union. The General Counsel alleges that this same conduct was an unlawful prohibition against solicitation. Because we have found that this con-

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, and orders that the Respondent, V & B, Inc., t/a Apollo Construction Co., Paterson, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.³

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT segregate our employees who supported Plumbers and Pipefitters Local Union No. 9, United Association of Plumbers and Pipefitters, or any other union, from our other employees.

WE WILL NOT follow and closely watch our employees in order to discourage them from assisting the Union.

WE WILL NOT restrict our employees' access to, from, and within our Paterson shop in order to discourage them from assisting the Union.

WE WILL NOT threaten to close down our operations in order to discourage employees from supporting the Union.

WE WILL NOT impliedly tell our employees that it would be futile for them to join the Union.

WE WILL NOT isolate our employees at construction sites, treat them disparately, issue orders to them that are designed to hold them up to ridicule among their coworkers, or harass them by following them closely and by barring other workers from talking with them

duct was unlawful in any event, and because we have ordered the Respondent to cease and desist from unlawfully restricting employees' access to the shop, we find it unnecessary to pass on the no-solicitation rule issue because such a finding would be cumulative and would have no effect on the remedy.

³ We have modified the notice to employees to conform to the Order.

in order to discourage them from supporting the Union.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT tell employees to remove their names from a wage increase petition circulated by other employees.

WE WILL NOT inform our employees that there would be no work for those employees who signed the wage increase petition.

WE WILL NOT create the impression among our employees that we would know if any of them talked with employees who support the Union.

WE WILL NOT discharge our employees because they joined or assisted the Union.

WE WILL NOT transfer our employees because they supported the Union.

WE WILL NOT issue verbal and/or written warnings to our employees in order to discourage them from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Richard Sabato, Gordon Johnson, Jimmie Strowder, John Hyman, Steven Cotto, Joseph Bakiewicz, Mark Clark, and Laurence O'Neil full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Richard Sabato, Gordon Johnson, Jimmie Strowder, John Hyman, Steven Cotto, Joseph Bakiewicz, Mark Clark, and Laurence O'Neil for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Richard Sabato, Gordon Johnson, Jimmie Strowder, John Hyman, Steven Cotto, Joseph Bakiewicz, Mark Clark, and Laurence O'Neil, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

V & B, INC. T/A APOLLO CONSTRUCTION CO.

Bert Dice-Goldberg, Esq., for the General Counsel.

Mark L. Goldstein, Esq. (Goldstein & Morris), of New York City, New York, for the Respondent.

Gary A. Carlson, Esq. (Kroll & Gaetcher), of Verona, New Jersey, for the Union.

DECISION

JAMES F. MORTON, Administrative Law Judge. The complaint issued by the General Counsel alleges that V & B, Inc., t/a Apollo Construction Company (the Respondent), in order to discourage its employees from joining or supporting Plumbers and Pipefitters Local Union No. 9, United Association of Plumbers and Pipefitters (the Union), has engaged in unfair labor practices within the meaning of Section (a) (1) and (3) of the National Labor Relations Act (the Act). These alleged unfair labor practices comprise the discharges of eight employees, issuance of warnings to employees, changes in their working conditions, unlawful interrogations, surveillance of their union activities, and other restrictions of employee rights protected by Section 7 of the Act. The Respondent's answer denies those allegations; also, it avers that one of the eight alleged discriminatees was a supervisor within the meaning of the Act and that another was not in its employ.

I heard this case in Newark, New Jersey on 11 days beginning August 28, 1995, and ending on March 12, 1996. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the construction and maintenance service business. In its operations annually, it meets the Board's nonretail standard for asserting jurisdiction.

II. LABOR ORGANIZATION

The pleadings, as amended at the hearing, establishes that the Union is a labor organization as defined in the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent has a shop in Paterson, New Jersey, where it employs welders and pipefitters to fabricate pipes; its employees in these classifications also install the pipes at construction sites. These employees have been unrepresented for purposes of collective bargaining.

The complaint originally named Strom Engineering, Inc. as a second respondent. During the hearing, Strom signed a settlement agreement which resolved the unfair labor practice in which it allegedly had engaged. I approved the agreement.

As a consequence, Strom's name does not appear in the case caption above.

B. The Union's Organizing Effort

In late 1994, the Respondent advertised in newspapers for welders and pipefitters. One of the alleged discriminatees, Gordon Johnson, is a member of the Union. In November 1994, he was asked by the Union's business manager to apply for a job with the Respondent. He did and was hired. Another alleged discriminatee, Richard Sabato, is a member of another Plumbers local, Local No. 14. In early December 1994, Local 14's assistant business manager asked him to call the Respondent's office in response to its advertisement. He did so, was hired and began work on December 5, 1994.

Sabato and Johnson, in the remaining weeks of that year, talked with other employees of the Respondent about joining the Union. Just after the New Year, Sabato and Johnson met with the business agent of the Union who was assigned to organize the Respondent's employees and they decided that the Union would campaign openly. They obtained hats and shirts with the Union's logo on them, for distribution to co-workers.

On the morning of January 3, 1995 (all dates hereafter are for 1995 unless stated otherwise), the Union faxed a letter to the Respondent which stated that Johnson, Sabato, and a third alleged discriminatee, John Hyman, (also a union member) are engaged in organizing activities. That same morning, Sabato, Hyman, and another alleged discriminatee, Steve Cotto, reported for work at the shop in Paterson, wearing items of clothing which bore the Union's logo. Another employee at the shop, George Salmon, wore a union hat given him by Sabato. That same day, Johnson and another alleged discriminatee, Jimmie Strowder, were installing pipe at a Mobil Chemical construction site in Edison, New Jersey (Mobil site); they were wearing shirts with the Union's insignia on them.

C. Alleged Surveillance, Restrictions of Employee Movements, Threat to Close, and Other Coercive Statements

The complaint alleges, and the Respondent's answer denies, that, during the first several days of 1995, the Respondent, at its shop in Paterson, engaged in surveillance of its employees, restricted their movements, hired guards to watch them, threatened to close down and, in other ways, endeavored to discourage them from joining or supporting the Union.

As to these allegations, I credit the accounts given by the witnesses called by the General Counsel, over the summary and implausible denials by the Respondent's witnesses.

1. As to alleged surveillance

During the morning of January 3, the Respondent's project manager, Jay Jann, brought Johnson back to the Paterson shop from the Mobil site where he had been working. Johnson, as noted above, was one of the three employees named in the Union's letter faxed to the Respondent earlier that morning. Johnson is a welder and normally works with a pipefitter as a two-man team. Upon his return, Johnson and Hyman, who is a pipefitter, were stationed behind a curtain and were not assigned the usual team tasks, likely because

there was no welding machine available for Johnson to use. Instead, they were assigned to do grinding work. Sabato and Salmon were assigned to work nearby. Cotto had been sent out to the Mobil site to replace Johnson. The other employees in the shop, including two laborers, were placed at the other end of the shop. Jann, who normally came into the shop area on infrequent occasions, sat for a substantial part of January 3 on a platform in the shop area observing the employees. Robert Marchese, a part owner and a vice president of the Respondent, and who rarely visited the shop area stayed within 50 feet of Johnson. On the next day, Vincent Iappelli, the Respondent's president, together with Peter Iappelli, its director of operations, and Frank Fiorentino, its project manager, arrived in the shop although they had not been there in previous weeks. Jann, Marchese, and Fiorentino took turns watching the employees. When one of the alleged discriminatees walked to the bathroom, he was followed by one of the three. Johnson related that, whenever he moved to one side of the curtain such that he was out of Marchese's sight, Marchese walked up to the curtain and looked behind it to keep him in view.

2. As to restrictions on access to the shop

On January 4, Johnson entered the Paterson shop at about 6:30 a.m. to hand out union leaflets prior to the 7 a.m. starting time. Jann told Johnson that he had to leave and to wait outside until it was time to start work. Until that day, the employees had access to the shop prior to starting time. Jann told Strowder that he and Sabato were not allowed to enter until starting time and that they were not allowed to talk to the other employees. Two big men, who were referred to as "guards" and who had handcuffs on the back of their pants, were stationed at the entrance of the shop. When Sabato sought to enter before 7 a.m., one blocked him and told Sabato that he was not allowed to go in. After they entered at 7 a.m., the employees were informed by Jann that they were not to leave the shop because the alarm system was being tested by the Respondent's insurance company. Previously, they were free to go out to eat. The employees, beginning on January 3, were required to park their cars in the street, rather than in the Respondent's parking lot as they had done up to that time; they were also then barred from using the microwave, located near the office area; on that same day, the water cooler was moved from that area into the shop.

3. As to alleged threat to close

The complaint alleges that the Respondent, by its project manager and estimator, Frank Fiorentino, threatened its employees that it would close down before it would be unionized and informed them that it was futile for them to support the Union. The Respondent's answer admits that Fiorentino is a supervisor as defined in the Act.

Sabato testified that, on January 4, Fiorentino, while standing by his truck, and with him and Gordon Johnson present, stated that the Respondent will never "go union," that it will close its doors before it goes union.

Johnson testified that he overheard Fiorentino make those statements to Sabato that day and that Fiorentino was then at his desk.

Fiorentino had not worked for an extended period due to illness but, as noted above, he appeared and was present at the Paterson shop on January 4. He did not testify at the hearing.

Notwithstanding that the accounts of Sabato and Johnson are not in accord as to the specific location at which the statements were made by Fiorentino, I credit their respective versions as they are uncontroverted and as they "rang true." In making this finding, I note, from the tenor of their accounts, that Fiorentino appeared to be conversing with them in a friendly way. I note too that Johnson, at one point in his testimony, observed that Fiorentino did not act in a hostile manner but rather was "friendly." Also, the objective evidence, discussed in the subsection above and in sections below, of other coercive acts by the Respondent in this time period lend credence to the accounts of Sabato and Johnson.

4. Use of security cameras.

The Union established a picket line at the Paterson shop after several of its employees, as discussed below, were laid off in January. The Respondent thereupon installed and operated security cameras to obtain a visual record of the exterior of its shop there. The Respondent contended that the cameras were used only to deter neighborhood vandalism. In that regard, Jann testified that the cameras monitored the employees' cars parked in its lot. The Respondent, later in the hearing, took the position however that the employees had been told not to park in the lot but to park in the street so that the Respondent would not be held responsible for vandalism or any other problem that occurred with the cars.

5. As to alleged threat of loss of work

Joseph Bakiewicz, allegedly discriminatorily discharged in April as discussed in a separate section below, was working in January for the Respondent at the Mobil site. When the Union put a picket line there, he declined to cross it to go to work. Jan telephoned him and told him to report to the Paterson shop instead. He testified that, while there, Jann approached him and another employee, Mark Clark, and told them that, if they go union, there would be "no work and no Apollo" but if they "stayed," they would always have a job with Apollo.

Mark Clark, another employee allegedly discriminatorily discharged by the Respondent in April, testified that Jann told him and Bakiewicz in about January that they were good workers and that the Respondent had work for them for up to 2 years.

In view of the material variance in the accounts of Bakiewicz and Clark, which appear to allude to the same conversation, I find that the General Counsel has not sustained the burden of persuading me that Jann, to discourage them from supporting the Union, had threatened that the Respondent would go out of business.

6. Analysis

Based on the foregoing, I find that the Respondent, to impede the Union's organizational effort, segregated those employees who had worn the Union's insignia from its other employees, engaged in close surveillance of its employees, restricted employee access to, from, and within the Paterson shop, and informed them in effect that it was futile for them

to support the Union and that it would close down its operations first. I further find, in view of the Union's picketing, the timing of the installation and use of the security cameras and the inconsistent positions of the Respondent thereon, that the security cameras were also used to discourage employees from assisting the Union.

As noted above, the General Counsel has not shown that the Respondent, by Jann, had told employees that there would be no work and no company if they supported the Union.

D. The Discharges in Early January

The complaint alleges that Cotto, Hyman, Johnson, and Strowder were discriminatorily discharged in the first week of January. The Respondent asserts that they were laid off solely for lack of work.

As alluded to above, the Respondent, in the latter part of 1994, placed advertisements in local newspapers for welders and pipefitters.

Cotto, Hyman, Johnson, Strowder, and Sabato testified that they each responded to the advertisements in late 1994. They testified that they were each interviewed by the Respondent's vice president, Robert Marchese, who, in essence, assured them that the Respondent had enough work that they each could look forward to employment with the Respondent for a year and more.

Marchese testified that he may have "pre-interviewed" Sabato, that he did not interview the others, and that he has nothing to do with hiring employees or with any other personnel matter. Jay Jann, the Respondent's project manager and estimator, testified that he interviewed and hired all of the Respondent's welders and pipefitters.

The General Counsel placed in evidence a tape recording that Johnson had made then he was interviewed for a job with the Respondent. The transcript of that tape discloses that Marchese fully participated in that interview and that Marchese told Johnson that the Respondent had "tons of work" to be done.

I credit the accounts of Johnson and of the other four named above as to the substance of their respective job interviews with the Respondent.

Hyman testified that, on January 3, the day that he, Cotto, and others worked, wearing clothing with the Union's logo, Jan called him to his office and told him that he, Jann, had to let him go. According to Hyman, Jann gave no reason for doing so.

Cotto testified that, on the same day as Hyman was let go, Jann called him, Cotto, to his office and told him that he had to let him go. Cotto left immediately and told Sabato what had happened. Sabato told him to go back and ask why. He did and was told by Jann that he did not know and that he, Cotto, could call the Respondent's main office in Lodi, New Jersey to find out. Cotto did and was told that he was laid off for lack of work. Cotto's account is corroborated by the transcript of a tape recording he had made of his discussion with Jann. As discussed below, Jann testified that he alone made the decision to lay off Cotto and the others. The Respondent asserts that Cotto has been totally discredited as a witness as he had been convicted for the murder of a police officer, as he had falsely claimed in his job application, that he was employed when in fact he then was serving time in jail, and as his testimony at the hearing pertaining to dates

of his prior employment was not correct. Yet, Cotto's account was objectively corroborated and Jann's was not. Furthermore, it is doubtful that Cotto would risk revocation of parole and a perjury indictment and conviction, in testifying on a point which assumed significance only because Jann's discredited account challenged it. Cotto's having been convicted of a felony, in the circumstances of this case, is insufficient to warrant a rejection of his testimony. Cf. *Franklin Iron & Metal Corp.*, 315 NLRB 819 (1994).

On January 6, Johnson was informed by Jann that his services were no longer needed. When Johnson told him that Marchese had promised him work, Jann replied that he knew nothing other than that Johnson's services were no longer required. Shortly after this, Strowder was told by Jann that he was laid off for lack of work.

Jann testified that he, alone, made the decision to lay off Hyman, Cotto, Johnson, and Strowder. Clearly, his testimony conflicts with the actual recording of the discussion he had with Cotto, as stated above.

I credit the accounts of Hyman, Cotto, Johnson, and Strowder. Based on their activities for the Union, the Respondent's knowledge thereof by reason of its having received the Union's letter faxed to it on the morning of January 3 and their having worn clothing with the Union's logo on January 3, the timing of their layoffs in relation to their union activity, the inconsistency between the assurances given by Marchese that they would have long term employment and their sudden layoffs so soon after their hire, the evidence of independent union animus, and the discredited testimony of Jann as to who made the decision to lay these employees off, I find that the General Counsel has made a prima facie showing that the Respondent's motive in laying these employees off was to discourage its employees from supporting the Union. Under the principles of *Wright Line*, 251 NLRB 1083 (1980), the Respondent then bears the burden of proving that it would have laid these employees had there been no organizational drive by the Union.

The Respondent presented no probative evidence to sustain its burden. At best, it showed that it regularly experiences peaks and valleys in its workloads and that there has been turnover of its employees. It attempted to meet its burden by asserting that two jobs, on which it had been working, closed down in January; those jobs, however, closed down at times when the Respondent was hiring employees for the Mobil job, a job which would run through the summer of 1995. The evidence also shows that it hired new employees soon after the layoffs of Hyman, Cotto, Johnson, and Strowder; it contracted with Strom to furnish it with employees to do the same type work the laid off employees did. In sum, I find that it has not its *Wright Line* burden.

E. Alleged Discrimination as to Sabato

The General Counsel contends that Sabato's work assignments were discriminatorily changed as of January 4 and that he was unlawfully discharged on January 20. The Respondent contends that Sabato was a supervisor and not an employee protected by the Act. It asserts too that, in any event, it changed his work assignments so that it could investigate whether he, as job coordinator, deliberately had defective piping fabricated and shipped to construction sites. It asserts that he was discharged when its investigation disclosed that

he was responsible for willfully having defective piping made and shipped.

1. Sabato's alleged supervisory status

On the form Sabato filled out when he applied to the Respondent for work, he wrote "foreman" as the position he was seeking. He was hired as a pipefitter in the Paterson shop and began work there on December 5, 1994, as related above. One of the pipefitters, whose first name was Reggie and who was scheduled to work at a construction site on December 11, 1994, had the job of handing to pipefitters isometric drawings which they used in measuring and cutting pipe. On Friday, December 9, 1994, Frank Zotynia, one of the Respondent's supervisors, brought Sabato to Vice President Marchese's office. Marchese asked Sabato "if he would like to do Reggie's job." Sabato accepted. He asked for a raise and agreed to try the job out for a week first.

Jay Jann met with the welders and pipefitters and told them that they were working on the first job that the Respondent was doing for Mobil and that they were to make sure that they followed the "procedures," a reference apparently to the specifications on the isometric drawings they were given. Jann told them that Sabato was in charge of the shop and that, if the procedures were not followed, Sabato would let him know. Zotynia told Sabato that he would be in contact with him to tell him what work to do.

The Respondent asserts that Sabato was designated as "job coordinator"; Sabato testified that he was never told that he was job coordinator but only that he was replacing Reggie.

Sabato was given a beeper which enabled him to communicate with Zotynia who was assigned to supervise the welders and pipefitters at the Mobil jobsite. As discussed further in the subsection below, Jann took the beeper away from him on January 3 when Sabato and other pipefitters and welders wore clothing bearing the Union's logo.

Zotynia supervised the installation of pipe at the Mobil site; the pipe was fabricated at the Paterson shop. Zotynia gave Sabato the orders as to which particular sections of a pipeline are to be fabricated. A section is usually quite long, with many and varied lengths of pipes, and has many angles, flanges, bends, and connections. Sabato's basic job then was to pull out the schematic drawing for a particular section and to give it to whichever pipefitter was available to fabricate it. Sabato inspected some of the work; his testimony indicates that it was not possible to check all the work. If a pipe contained a defect, he would have the pipefitter or welder, responsible for the defect, correct it. Sabato spent about 60 percent to 70 percent of his working time doing pipefitting work himself. The remainder was spent keeping time records of the employees, handing out the isometrics, and checking the work done in the shop. In mid-December, Marchese complimented him on the cleanliness of the shop. Sabato and any of the shop employees who were not busy at the end of the day swept the shop then to keep it clean.

As discussed below, Sabato was transferred on January 4 to work as a pipefitter at a jobsite in Newark. Sabato worked there under Foreman Scott Williams, whom the Respondent conceded was a supervisor as defined in the Act. On about 2 days while there, Williams was absent due to illness. On those occasions, Marchese told Sabato that he could not work there without a foreman and that he should report to

the shop in Paterson. Except for those 2 days, he worked at the Newark site until his discharge on January 20.

There is no credible evidence that Sabato possessed or exercised any of the indicia of supervisory authority set out in Section 2(11) of the Act. His distributing work among fully qualified craft employees, done at the direction of Zotynia via phone and which did not require the exercise of any independent judgment, is no basis to find that he was a supervisor. His duties, *inter alia*, required him to report to Jann any problems that may develop at the Paterson shop and to keep the shop clean. The Respondent relies on certain secondary indicia, e.g., he used a desk, had a beeper, was told he was "in charge" of the Paterson shop, and checked some of the work done by journeyman. These cannot substitute for evidence of supervisory indicia. At best from the standpoint of the Respondent, and until his transfer to the Rose Color jobsite, he was a leadman, not a supervisor within the meaning of the Act. See *S.D.I. Operating Partners, L.P.*, 321 NLRB No. 24 (April 30, 1996). As of the date of his discharge, he cannot even be said to have been a leadman.

2. The change in his work assignment and his discharge

As noted above, Sabato was one of the two individuals in the Respondent's employ who led the Union's organizational drive. Within about a week after he had been hired as a pipefitter in early December, 1994, he was promoted, as noted above, to a position analogous to a leadman and given a beeper in. On January 3, the day he and others wore clothing at work which bore the Union's logo, Jay Jann "grabbed" the beeper from him. That evening, Jann called him at home and told him to wear warm clothing to work the next morning because he was going to be sent to a cold construction site. On January 4, he was sent to work at a construction site at a Rose Color plant in Newark, New Jersey. The record indicates that, from that time and except for 1 or 2 days when he worked in the Paterson shop, Sabato worked at the Rose Color site until January 20. On one of the days when he returned to the Paterson shop, he was asked to look at pipe fabricated by Robert Marchese, the Respondent's vice president. Sabato found an error that Marchese corrected; Marchese expressed his appreciation to Sabato for his help.

Sabato returned to the Rose Color site and worked there until January 20. Sabato testified that at about 10 a.m. that day, he spoke by telephone with Jann from that site to inform him that he was going on strike. He testified further that he then began picketing the jobsite with a placard which protested the Respondent's unfair labor practices. That evening, according to Sabato, Jann called him at home and told him that his services were no longer needed.

Jann testified that, upon learning on January 3 that defective piping had been sent to the Mobil site, he told Sabato to report for work at the Rose Color site "as a supervisor and (to) assist another pipefitter." Jann testified that he did so because Sabato has 20 years' experience as a pipefitter whereas the one he would "supervise" had only 2 years' experience. It is clear, however, from other parts of the record, that the other pipefitter Jann referred to was Scott Williams, who the Respondent acknowledges, is a supervisor within the meaning of the Act. Jann's prehearing affidavit states that he sent Sabato to the Rose Color job because he needed a pipefitter there; it made no mention that he was sent there as a supervisor. Sabato was transferred, according to Jann, while

he investigated Sabato's involvement with respect to the fabrication of defective piping at the Paterson shop.

Jann's testimony, about the investigation he conducted, is brief and summary. His account is as follows. It takes 3 weeks from the time pipe is fabricated in the Paterson shop to the date it is delivered to the Mobil site. The defective pipe delivered to the Mobil site on and before January 3 must have been cut 3 weeks previously, i.e., in about mid-December 1994. Inasmuch as Sabato had been promoted in mid-December 1994, to job coordinator in Paterson in charge of production there, he was responsible for the defects in the pipes. In view of the extent of the defects, Sabato purposely arranged for those defects. The defects consisted of a woefully undersized flange and of improperly cut pipes. These, if installed, would not have fit properly and would not have been able to withstand the pressure under which hot oil was to be conveyed by the piping. There would then have been the likelihood of spillage and of a devastating explosion.

Jann testified further as follows. He completed his investigation on January 20, the day he discharged Sabato. One of the exhibits he obtained during the investigation was a photograph which has what appears to be the date 2-23-95, on it. Jann professed no knowledge of what those numbers were or how they came to be on the photograph. Jann testified too that the reason he gave Sabato on January 20 for his discharge, that his services were no longer needed due to lack of work, was not the real reason. He stated that he gave that reason to Sabato because he was afraid of Sabato. Jann's prehearing affidavit makes no reference to any fear he had of Sabato.

According to the Respondent, the investigation consisted of its looking at defective pipes, and checking isometric drawings and timesheets, to verify that Sabato was "in charge" of the shop when the pipes were fabricated. There is nothing to explain why it took from January 5 to January 20 to complete such an examination. There is nothing to indicate that it checked with or disciplined any of the pipefitters or welders at the Paterson shop for having worked on the assertedly defective material.

The General Counsel, citing *Bannon Mills*, 146 NLRB 611, 613 (1964), has moved to strike the Respondent's testimony respecting its purported investigation of Sabato's "derelictions." The motion was predicated on the following facts—that the General Counsel subpoenaed certain timesheets of the Respondent, that the Respondent produced timesheets pursuant thereto and represented that it had produced all, that the Respondent later proffered in evidence timesheets in furtherance of its contentions, that those timesheets had not been produced pursuant to the subpoena although clearly within its scope, and that the Respondent failed to explain why those timesheets had been withheld from the General Counsel's subpoena. I had reserved ruling on the motion. In view of the credibility findings herein, it is unnecessary to strike the timesheets proffered by the Respondent. Suffice it to note that its withholding those documents from the General Counsel does little to enhance its argument that its contentions should be given credence.

Pipes fabricated at Paterson, upon delivery to the Mobil site, were examined each day by Zotynia, the Respondent's field coordinator there, for defects and were checked by him to ensure that they met specifications. He then had to obtain

the approval of Mobil's engineers before the pipes could be installed.

The General Counsel notes that, according to Jann's scenario, the pipes, which Sabato purposely had the journeymen make with defects and which Jann assertedly learned about on January 3, would have to have been fabricated at Paterson prior to the date, December 12, 1994, on which Jann appointed Sabato as "job coordinator" there.

In any event, it is unlikely that Sabato, with 20 years experience in the industry, would deliberately cause defective pipe to be fabricated so as to bring about an explosion and a conflagration at a construction site where many individuals could be killed, including Johnson, who was helping him in the Union's effort to organize the employees of the Respondent and including the very employees he was trying to organize. It is also unlikely, considering Sabato's long experience, that he caused the faulty fabrication of pipe when it obviously would be examined in the field before installation. It is most unlikely that the Respondent, had it a genuine belief that Sabato was deliberately performing defective work, would have sent him to the Rose Color job as a "supervisor" and thereby have afforded him an additional opportunity to sabotage its business. Further, Sabato hardly played the role of a saboteur when he helped Marchese, the Respondent's vice president, correct a mistake that Marchese himself had made when fabricating a pipe. In short, Jann's reason for transferring Sabato to the Rose Color site on January 5 and his reason for discharging him on January were obvious pretexts.

In view of Sabato's activities on the Union's behalf, the Respondent's knowledge of those activities, its *animus* towards the Union, the timing of Sabato's transfer in relation to the receipt by the Respondent of the Union's January 3 letter and Sabato's protected actions on that day, and as the reason for Sabato's transfer to the Rose Color site was a pretext, I find that he was transferred because of his support for the Union.

The evidence clearly shows that Sabato was discharged on January 20 almost immediately after he told Jann that he was going on strike to protest the earlier discharges of Hyman et al. and then left the Rose Color site to picket. The reason Jann proffered for Sabato's discharge is an obvious afterthought. In view of Sabato's activities in support of the Union, the Respondent's knowledge thereof, the timing of his discharge, the evidence of union animus, and the pretextual nature of the reason given by the Respondent for discharging Sabato, I find that it discharged him in order to discourage its employees from joining or supporting the Union.

F. Alleged Violations in April

At issue also are alleged violations of the Act by the Respondent in April. The complaint specifies surveillance of employees' union activities, discriminatory applications of work rules, unlawful threats, and discriminatory discharges of six employees, namely, Johnson, Hyman, and Strowder (they were laid off in January as discussed above and were recalled to work by the Respondent in April), Joseph Bakiewicz, Mark Clark, and Lawrence O'Neil. I credit the accounts given by these employees over the accounts of the witnesses for the Respondent where there are conflicts. I do so because, on many significant points, the testimony of the

Respondent's witnesses was adduced via leading questions and given in conclusory form, is implausible, is not supported by documentary material available to the Respondent, and at times is at odds with records in evidence. Not to belabor the matter, but, as an example, I note that Jann testified that he had no knowledge that Sabato was involved with the Union when he discharged Sabato and that he had never known of Sabato's involvement with the Union. Yet, when shown his prehearing affidavit, Jann admitted that he knew in about late December 1994 or early January, that Sabato had told employees that the Union was sending a letter to the Respondent, a clear reference to the January 3 letter referred to above, and which named Sabato expressly as one of the three employees who were engaged in the Union's organizational effort.

1. As to Johnson

Johnson, who had been unlawfully laid off in January, as found above, returned on April 17 and was discharged on April 18. He gave the following account as to his discharge. Upon his reporting to the Mobil site on April 17, Jann assigned him to work at a "spot" next to an office trailer and told him that he was not to leave it or talk to anyone. Other employees, however, spoke with him as they walked to and from a nearby tool box. Jann told them not to talk with Johnson and had the tool box moved. At lunchtime, Jann sat himself next to Johnson in the lunch room throughout lunch. Johnson wore a hard hat at lunch because Jann insisted on it. None of the other employees were wearing hard hats then and they were all laughing at him. Whenever he tried to talk to any of the employees, Jann interrupted. While leaving the area after lunch, Jann told him that his safety glasses were the wrong color. Johnson replied that the glasses he was wearing were OSHA approved and that he had not been issued any glasses by the Respondent. Jann gave him the glasses he was wearing and told him that now he was issued glasses. Johnson gave them back to Jann and returned to work. Shortly afterwards, Jann came by and told him that he had to wear a face shield. Johnson replied that no one else was wearing one. No one was. Jann left and returned with a face shield. He ordered Johnson to put it on. During the day, Johnson burned his arm slightly while working. Jann came by and "was harassing" Johnson. Johnson told him that, as long as he was there, Jann could fill out a safety report to note that he had burned his arm, that the gloves he had been given were just work gloves, not welding gloves, and that the coveralls he had been given had no snaps. Jann told him to accompany him to the trailer where Jann put salve and a bandage on the burn. Jann told him to sit in a chair, 10 feet from Jann's desk, and that he was not to move from it. While there, two employees spoke with Johnson. Both times, Jann shouted to these employees not to talk with Johnson. Johnson sat in the chair for an hour and a half, until quitting time. The other employees were cleaning the area then. Johnson asked Jann if he wanted him to help. Jann told him to just stand there and not to do anything.

Johnson's testimony continued as to the events on the next day. Upon arriving for work, Jann told him that he was required to wear safety glasses under his welding shield. While this was a requirement when welding, this was done only when companies "get real safety crazy." Later that day, Jann gave him a pair of safety goggles to put over the safety

glasses. That day, because he was wearing safety goggles, safety glasses, and a face shield, everyone was laughing at him. Johnson has been a welder for 27 years and never had to wear such a combination. Jann returned to his work area during the day and told him to grind down the welds further. Johnson told him that he was grinding them so that they would pass the X-ray inspections and that was all that counted. Johnson reminded Jann that he, Johnson, was a certified welder and that Jann was not. At lunch, Jann again positioned himself next to Johnson. Unlike the preceding day, all the Apollo employees were now wearing hard hats. After lunch, he told Jann that the lens on his face shield was dirty. Jann told him not to do any work until he got a new lens. Johnson obtained a lens from Zotynia. Later, Jann came by and told him that he did not want him looking over any welder's shoulder, a reference to Johnson's having stopped to look at a weld while he was en route to get the lens from Zotynia. Johnson, using expletives, told Jann, in substance, that Jann was no one to talk about looking over shoulders as that was all that Jann has been doing to him. Johnson screamed that Jann should leave him the (expletive) alone.

At 3 o'clock, on April 18, two Mobil security officers told him that he was terminated for safety violations and abusive language and escorted him from the site.

It is evident, from the tape recording discussed above as to the interview Johnson had when he was hired, that his casual, everyday speech is quite liberally sprinkled with expletives. It is evident too, from tapes in evidence, that Jann's everyday speech is similarly hued.

Jann's account is that Johnson was a "lunatic" both in January and in April. He related also that Mobil has stringent safety rules that Johnson was aware of and that Johnson refused to comply with them despite repeated counseling.

Johnson exhibited an intense personality. I find that Jann deliberately baited and harassed Johnson from the moment he returned to the Respondent's employ to the time of his discharge the following day. He kept Johnson on a short string, barred employees from talking with him, gave orders that held Johnson up to ridicule and, when Johnson told him, in colorful language, to let him alone so he could work, the Respondent seized upon this as a reason to discharge Johnson. He was one of the two leading activists for the Union and had been unlawfully laid off but several months before. The Respondent harassed him, subjected him to discriminatory work rules, and discharged him in furtherance of its efforts to discourage its employees from joining and supporting the Union. The Respondent cannot provoke incidents and benefit from them. Cf. *Domsey Trading Corp.*, 310 NLRB 777, 804-805 (1993).

2. As to Joseph Bakiewicz

Bakiewicz testified as follows respecting his alleged discriminatory discharge on April 19. He began working for the Respondent as a pipefitter in November 1994 and, as noted above, continued in its employ despite the Union's picket line in January. In April, he was working at the Mobil site. On April 19, he signed the petition for a \$2 raise that Jimmie Strowder, whose discharge is discussed below, had circulated. Bakiewicz testified that, on that same day, Zotynia told him to get his name off that petition and that there would be no work for anyone who signed it. He testified further Zotynia told him, on April 21, that the Respondent

would get rid of everyone who signed the petition and that he, Bakiewicz, should call Jann to find out what he is to do. Bakiewicz related that he called Jann and that Jann told him to stay out until everything was resolved with the Union and to call back in a week. Bakiewicz testified that his subsequent calls to Jann went unanswered.

I credit Bakiewicz' testimony over the summary denials by Zotynia.

Jann testified as follows. Bakiewicz told him that he still wanted to work but was scared that the Union would find out that he was a member of a union. Bakiewicz works full time for Conrail and once told him that he is a member of a union. He, Jann, did not discharge Bakiewicz. The Respondent took the position, at the hearing, that Bakiewicz simply had "disappeared" from work.

Bakiewicz' account of his discussion with Jann is the more plausible one and I credit it. The fact that Clark failed to corroborate Bakiewicz' testimony respecting an alleged unlawful threat by Jann, as noted above, is not a sufficient basis to reject Bakiewicz' testimony in toto.

The credited evidence establishes that the Respondent, by Zotynia, a supervisor as defined in the Act, warned that it would discharge all employees who signed the wage increase petition. That petition, as discussed in a separate section below, was prepared by Strowder, at Sabato's instance, and was obviously an extension of Sabato's organizing effort in behalf of the Union. The Respondent's treatment of Bakiewicz on April 19, dismissing him and then ignoring him, was tantamount to a discharge. In view of the timing of the discharge, relative to Zotynia's warning, and as the Respondent's had knowledge that Bakiewicz had signed the petition, I find that the Respondent discharged him in order to discourage its employees from engaging in activities protected by Section 7 of the Act and from joining or supporting the Union.

3. As to Mark Clark

He worked as a welder for the Respondent from late 1994 until his discharge on April 22. He testified credibly that, after he signed the petition for a \$2 raise on April 19, Zotynia asked him if he knew that the guys who were behind the petition were trying to get the Union in and that the Respondent would, in effect, go out of business before it would go Union. On April 22, Jann telephoned him to say that his position was terminated. When he asked why, Jann told him that his services were no longer needed.

Jann testified that Clark was terminated because of lack of work.

The General Counsel has made out a prima facie case that the Respondent discharged Clark after unlawfully interrogating and warning him. In view of the timing of his termination of employment in relation to the interrogation and warning, as the credited evidence discussed below is that Zotynia saw the petition which bore Clark's signature on it, as the Respondent had assured employees of long-term employment, and as the Respondent has failed to adduce any persuasive evidence that it would have terminated Clark in any event, absent the discrimination, I find that Clark was discharged by the Respondent in order to discourage its employees from supporting the Union.

4. As to Hyman

Hyman's account is as follows as to his discharge on April 24 after his return to the Mobil site on April 14. Jann repeatedly told him to put on his safety glasses. Each time, he responded that the glasses given him were badly scratched and that he had to take them off temporarily in order to see the markings he used in his work as a pipefitter. He was given new safety glasses on April 18. While walking to lunch on April 24, he took his glasses off. Zotynia told him that he had to have his safety glasses on at lunch. Hyman had heard Zotynia talking to employees about the work they were doing or to do while those employees were not wearing glasses. At least on one of those occasions, Zotynia said nothing to one of those employees about his not wearing glasses.

Laurence O'Neil, another alleged discriminatee, testified credibly that the Respondent had enforced none of the safety rules prior to the return of Johnson, Strowder, and Hyman to the Mobil site.

On April 19, Hyman signed a petition given him by Strowder asking for a \$2-per-hour raise. Strowder testified, as discussed below, that he showed the petition to Zotynia while employees were signing it.

On April 24, Jann terminated Hyman's employment and told him, in substance, that it was because of his repeated failures to wear safety glasses.

The General Counsel put in evidence a copy of an "employee warning report" signed by Zotynia and Jann, dated April 18, which recited that Hyman had been given five verbal warnings for failing to wear safety glasses and that, if it happened again, he would be terminated. Zotynia testified that, on six occasions, he observed Hyman without safety glasses while at the Mobil site and that, each time, he told Hyman that he had to wear them. The warning report, dated April 18, stated that Hyman had been warned that the next time he failed to wear his safety glasses, he would be terminated. Zotynia's account does not contain any reference to such a warning. Jann testified to other matters but did not refer to Hyman's discharge in April.

The Respondent undertook to enforce Mobil's safety rules only upon the return of employees it had discriminatorily laid off in January and enforced those rules against Hyman on a disparate basis. It did so as part of a harassment campaign designed to undermine support for the Union among its employees. It cannot seize upon that effort to justify discharging Hyman. I find that it harassed and discharged Hyman to discourage its employees from supporting the Union.

5. As to Strowder

Strowder testified as follows respecting his discharge on April 24. After his layoff on January 6, he participated in the Union's picketing of the Respondent at the Mobil jobsite. On April 7, he was recalled to work there by the Respondent. On April 19, at Sabato's urging, he prepared a petition which stated that the undersigned employees sought a wage increase of \$2 per hour, effective immediately. He signed it on that day, as did Hyman, Laurence O'Neil, Mark Clark, and Joseph Bakiewicz. He showed the signed petition to the Respondent's supervisor, Frank Zotynia. On that same day, Jann gave him a written warning for absences on April 6, 10, and 11. On April 24, he was discharged by Jann who told

him that his employment was terminated for sleeping on the job. He informed Jann that he had a witness who would establish that he was not sleeping. Jann gave him a notice of termination of employment. Strowder's account is that, while working on April 24, he looked for a plumb bob to take a measurement but did not find it. He related that he thought that it might have fallen under a tank when he used it the previous day and that he crawled under the tank searching for it. Zotynia came by and asked him what he was doing there. He told Zotynia that he was looking for the plumb bob. This took place about 2 hours before the workday ended.

Zotynia testified as follows. He supervised the employees at the Mobil site and had the authority to hire and fire and discipline employees. On April 24, he saw Strowder lying under a tank and called out to him three times before Strowder stirred and opened his eyes. He told Strowder to get back to work.

I credit Strowder's account. Jann made no effort to inquire into the merits of Strowder's assertion that he was not sleeping on the job. It is doubtful too, in view of the Respondent's own testimony in this case as to the inherent danger of having a defective pipe installed at the Mobil site, that Zotynia would tell Strowder to get back to work if he were in such a condition that he could not stay awake. I find that Strowder's discharge was but a continuation of the discriminatory treatment accorded him in January, occasioned by his having prepared and circulated the petition for a \$2-per-hour raise.

6. Lawrence O'Neil

The complaint alleges that, on April 25, the Respondent unlawfully discharged O'Neil from its employ at the Mobil site. The Respondent contends, first, that O'Neil was not in its employ and also that it had nothing to do with his having left the Mobil site.

I credit O'Neil account which is as follows. He, in response to a newspaper advertisement, sent his job resume to Strom Engineering, Inc., (Strom) at its office in Minnesota. Strom, by telephone, sent him to the Respondent's plant in Paterson. When he reported there in late February, Jann tested him with respect to his ability to read blueprints and to weld. On the following day, Jann talked to him about a job the Respondent would be doing in Fieldsboro, near Trenton, New Jersey. He said that only Strom employees would be employed there, that the job would last about a year and that he "needed about fifteen guys" there. He told O'Neil to report to the Mobil site the next day. O'Neil's paycheck from Strom for the first week he worked at the Mobil site was at a rate of \$10.50 per hour. He complained to Jann who told him that Strom had made a mistake and that he would take care of it. An adjustment was made in his paycheck for the third week he worked; the Strom paycheck was then at the rate of \$14.00 per hour.

O'Neil worked as a welder at the Mobil site, taking his orders from Zotynia. While there, he asked Jann if his hours could be changed as he had a second job. Jann gave his approval and his work schedule was revised. There were about 18 welders and pipefitters there, 4 of whom were on Strom's payroll.

About the end of March, Jann and Zotynia told him that "the union guys are going to be coming back," that they did

not want him to talk to them and that if he spoke with them, they would know about it. Jann asked him if Strowder was bothering him. O'Neil further testified that Zotynia told him that the union guys "were a bunch of scum bags (who were) trying to destroy the company."

On April 19, O'Neil signed a petition that Strowder gave him and which asked for a \$2 raise. He testified that, on that same day, Zotynia held a paper in his hand and told him that if he wanted a raise, he should come to him individually because "they're out to screw the company."

On April 25, the day after his partner, Strowder, had been discharged as discussed above, O'Neil waited for Zotynia to assign him to work. Zotynia arrived and asked him if he was trying to sabotage a nearby pump. O'Neil told him that he was out of his mind. Zotynia said that he would have Mobil's security guards escort him from the site. O'Neil told him that he would not wait and he left.

As the Respondent gave O'Neil his work assignments at the Mobil site, teamed him with one of its own employees, discussed with him his wage rate, and assisted in arranging for an increase therein, and effectively discharged him, I find that he was an employee of the Respondent for purposes of the Act, notwithstanding that his paycheck emanated from Strom. Cf. *Capitol EMI Music*, 311 NLRB 997 (1993). I further find that it discharged O'Neil in furtherance of its aim to terminate the employment of those who signed the petition prepared by Strowder, a petition it attributed to the Union. In these circumstances, O'Neil was discharged by the Respondent in order to discourage its employees from becoming members of the Union.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent interfered with, restrained and coerced its employees with respect to the exercise by them of their rights under Section 7 of the Act and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by having

(a) Segregated employees who supported the Union from its other employees.

(b) Followed and closely watched employees to discourage them from assisting the Union.

(c) Restricted employees' access to, from, and within its Paterson shop in order to discourage them from assisting the Union.

(d) Threatened to close down its operations to discourage employees from supporting the Union.

(e) Impliedly told employees that it would be futile for them to join the Union.

(f) Isolated employees at construction sites, treated them disparately, issued orders to them designed to hold them up to ridicule among their coworkers, harassed them by following them closely and by barring other workers from talking with them.

(g) Coercively interrogated employees as to their activities for the Union.

(h) Told employees to remove their names from a wage increase petition circulated by other employees

(i) Informed employees that there would be no work for those employees who signed the petition.

(j) Created the impression among its employees that it would know if any talked with employees who support the Union.

(k) Engaged in the conduct described in the next paragraph.

4. The Respondent, to discourage its employees from becoming members of the Union or supporting it, has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act by having

(a) Discharged employees John Hyman, Steven Cotto, Gordon Johnson, Jimmie Strowder, and Richard Sabato in January, 1995.

(b) Discharged Hyman, Johnson, and Strowder in April after having recalled them to work.

(c) Discharged employees Joseph Bakiewicz, Mark Clark, and Laurence O'Neil in April, 1995.

(d) Transferred Richard Sabato to the Rose Color site in January, 1995

(e) Issued verbal and written warnings to its employees.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees as found above, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from dates of their respective discharges to dates of proper offer of reinstatement, less any net interim earnings; as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, V & B, Inc., t/a Apollo Construction Co., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Segregating employees who support Plumbers and Pipefitters Local Union No. 9, United Association of Plumbers and Pipefitters, AFL-CIO (the Union) from its other employees.

(b) Following and closely watching employees to discourage them from assisting the Union.

(c) Restricting employees' access to, from, and within its Paterson shop in order to discourage them from assisting the Union.

(d) Threatening to close down its operations to discourage employees from supporting the Union.

(e) Impliedly telling employees that it would be futile for them to join the Union.

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Isolating employees at construction sites, treating them disparately, issuing orders to them designed to hold them up to ridicule among their coworkers, harassing them by following them closely and by barring other workers from talking with them in order to discourage them from supporting the Union.

(g) Coercively interrogating employees as to their activities for the Union.

(h) Telling employees to remove their names from a wage increase petition circulated by other employees.

(i) Informing employees that there would be no work for those employees who signed the petition.

(j) Creating the impression among its employees that it would know if any talked with employees who support the Union.

(k) Discharging employees because they joined or assisted the Union.

(l) Transferring employees because they supported the Union.

(m) Issuing warnings to employees to discourage them from supporting the Union.

(n) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Richard Sabato, Gordon Johnson, Jimmie Strowder, John Hyman, Steven Cotto, Joseph Bakiewicz, Mark Clark, and Laurence O'Neil full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make these employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Paterson, New Jersey copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 12, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."